

REMARKS

This response is being filed in reply to the Office Action mailed March 18, 2008. In that Office Action all pending claims were rejected under 35 U.S.C. § 103(a).

§103 Rejections

Claims 1-3, 5-6, 8, 21-23, and 27-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Odinak (U.S. Publication No. 2005/0065779) in view of Myr (U.S. Publication No. 2001/0029425). Claims 24-26 and 30-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Odinak in view of Myr and further in view of Austin (U.S. Patent No. 6,236,855). Claims 24-26 and 30-32 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Odinak in view of Myr and further in view of Heidari (U.S. Patent No. 5,854,978). These rejections are respectfully traversed for the reasons discussed below.

The Office Action fails to set forth a *prima facie* case for obviousness because it has not established that the portions of Odinak cited by the Examiner constitute prior art. The Office Action relies primarily on Odinak in all rejections of Applicant's claims under §103. But Applicant's filing date predates the Odinak reference. The Odinak reference was filed on August 2, 2004 and published on March 24, 2005 while the present application was filed on September 30, 2003, over ten months before Odinak's filing date. Thus, any prior art effect of the reference must be by virtue of its inclusion of subject matter from the earlier filed application(s) from which it claims priority. And, for this, given that Odinak is a continuation-in-part application, the Odinak reference by definition contains at least some new matter not present in the earlier applications. See MPEP § 201.08. As a result, to meet the required burden for establishing a *prima facie* case of obviousness, the Examiner must establish that the disclosure from Odinak being used in the rejection antedates Applicant's subject matter by being present in one or more of the earlier applications from which priority is claimed. However, the Office Action provides no statement or analysis establishing that the support relied upon in Odinak to reject the subject matter of Applicant's claims is entitled to the benefit of an earlier filing date.

If the Examiner wishes to maintain the rejection, Applicant respectfully requests that the Examiner identify which earlier application contains the disclosure being relied upon for the rejection and where in that earlier application the disclosure appears. In this regard, Applicant notes that if the disclosure being relied upon is not contained in a single one of the earlier applications, but is taken from two or more of them, then Applicant submits that Odinak is not a proper prior art reference, as it would be necessary for the Examiner to rely upon the multiple earlier applications separately as prior art (if they independently constitute prior art) and to provide a legally proper reason as to why it would have been obvious as of Applicant's filing date to combine their subject matter in the manner claimed by Applicant.

In view of the foregoing, Applicant requests that the rejections be withdrawn and that all claims be allowed. Reconsideration is therefore requested. The Examiner is invited to telephone the undersigned if doing so would advance prosecution of this case.

The Commissioner is hereby authorized to charge Deposit Account No. 07-0960 for any required fees or to credit that same deposit account with any overpayment associated with this communication.

Respectfully submitted,

REISING, ETHINGTON, BARNES, KISSELLE, P.C.

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JDS/ECC

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